

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRACY MOORE,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, DOES I-X and
ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: 2:11-cv-00693-LRH-PAL

**STIPULATION AND ORDER FOR
DISMISSAL AND AGREEMENT FOR
PRIVATE BINDING ARBITRATION**

This Stipulation and Order of Dismissal and Agreement for Private and Binding Arbitration (hereinafter "Agreement") is entered into by Plaintiff, Tracy Moore ("Plaintiff"), and Defendant, State Farm Mutual Automobile Insurance Company ("State Farm"), (collectively referred to as the "Parties"), as an alternative method of resolving a dispute that has allegedly arisen from an October 8, 2009, automobile accident and subsequent claims handling, which culminated in a lawsuit styled *Tracy Moore v. State Farm Mutual Automobile Insurance Company*, currently pending in the United States District Court, District of Nevada, Case 2:11-cv-00693-LRH-PAL. Plaintiff is represented by Chad A. Bowers, Esq. State Farm is represented by Riley A. Clayton, Esq. The following terms and conditions of this Agreement will become effective upon the signature by the Parties and the execution and filing of the same by this Court.

1 1. State Farm issued a policy of automobile insurance, Policy No. 49 0408-D26-28, which
2 provides, among other coverages, medical payments ("MPC") and underinsured motorist ("UIM")
3 coverage. Coverage is provided up to the applicable policy limits, subject to all of the terms and
4 conditions therein and any/all applicable offsets.

5 2. In an effort to resolve all disputes and controversies between the Parties arising out of and
6 relating to the subject automobile accident and subsequent claims handling, the Parties have agreed to
7 place this matter into private binding arbitration, with and agreement that all claims, whether contractual
8 or extra-contractual, are dismissed with prejudice

9 3. The Parties enter into this Agreement and agree to be bound by its terms as fully stated
10 herein.

11 4. The Parties agree that the arbitration shall be binding and shall be the sole and final
12 resolution and adjudication of Plaintiff's claims against State Farm, which in any way arise out of or
13 relate to the October 8, 2009 accident, and any claims handling or claims decision. This clause and
14 mutual covenant is of the essence to this Agreement. The arbitrator's decision and award shall be the
15 sole basis for recovery on these claims and shall be final and binding. The Parties agree that there shall
16 be no right of appeal of the arbitrator's decision to any trial court, court of appeals, the Nevada Supreme
17 Court, or to any other court, forum, person or entity, or the arbitrator himself. Likewise, the Parties
18 agree that there shall be no right to submit a motion for reconsideration or similar or equivalent motion
19 or request to the arbitrator.

20 5. The arbitrator shall not be informed concerning any cap on damages, low/high amounts of
21 proceeds potentially available, any range of award, and/or the amount of any applicable offsets. The
22 arbitrator will only be asked to resolve the issue of Plaintiff's legal entitlement, if any, to additional
23 MPC proceeds or any UIM proceeds, subject to all terms, conditions, and offsets under the policy and
24 Nevada law. In other words, the arbitrator shall determine the extent of Plaintiff's injuries/damages by
25 placing a fair and equitable "total value" (which includes any past/future medical specials, past/future
26 wage loss, past/future pain and suffering and other compensable general damages) on the Plaintiff's
27 claim. The arbitrator will not be asked to and will not consider any alleged claims handling/decision-
28

1 making issues or liability for extra-contractual claims, including, but not limited to, breach of the
2 implied covenant of good faith and fair dealing, statutory claims handling violations, and/or liability for
3 punitive or other extra-contractual damages, as such claims and damages have been and are expressly
4 waived by Plaintiff and dismissed with prejudice by this Agreement.

5 6. The Parties will jointly select a single arbitrator to serve as the arbitrator of this case. The
6 arbitrator will be James Armstrong, Esq. The arbitration hearing will be set for 120 days after the parties
7 conduct the Early Arbitration Conference with the arbitrator.

8 7. Plaintiff, through this Agreement, agrees to dismiss her present lawsuit with prejudice
9 that is currently on file in the United States District Court, District of Nevada.

10 8. The Parties shall advise the arbitrator of an agreement for binding arbitration and proceed
11 in a manner that is agreeable to the Parties and to the arbitrator. The Parties shall be allowed to conduct
12 any reasonable discovery permitted under the Nevada Rules of Civil Procedure. The arbitrator shall
13 resolve any and all discovery disputes, including the scope of permitted discovery. Arbitration briefs
14 and exhibits are to be submitted in accordance with the instructions and desires of the arbitrator.

15 9. The arbitration hearing will be held at a mutually agreed upon date.

16 10. The arbitrator shall be given discretion to conduct the arbitration hearing in an informal
17 and expeditious manner allowing for such testimony or evidence as is needed to reach a decision. The
18 parties may submit and the arbitrator may consider telephonic or deposition testimony of any witness
19 and written expert reports consistent with the format requirements of NRCP 26(a)(2) in lieu of live
20 expert testimony.

21 11. As mentioned above, the arbitrator will place a full, total value on Plaintiff's
22 injuries/damages, and include a specific line item in any potential award for past medical specials, which
23 are attributable to the subject accident. Regardless of the total value placed on Plaintiff's
24 injuries/damages by the Arbitrator, State Farm will be not be obligated to pay Plaintiff unless the total
25 value exceeds the applicable offsets, which in this case are \$4,752.68 already paid by State Farm under
26 the MPC coverage, and \$100,000 already paid by the tortfeasor's carrier, for total offsets of \$104,752.68.

27 12. After the arbitrator places a total value on Plaintiff's injuries/damages, State Farm's
28

1 potential obligation to pay under this Agreement will be capped at the remaining MPC limit, which is
2 \$20,247.32 in MPC and \$25,000 in UIM coverage.

3 13. The only manner in which State Farm would be obligated to pay any additional MPC or
4 any UIM proceeds is if the Arbitrator concludes that the total value of Plaintiff's claim exceeds
5 \$104,752.68. By way of example, if the arbitrator were to conclude that the total value of Plaintiff's
6 injuries/damages were only \$100,000, and that \$4,000 of that amount was for medical bills that were
7 reasonable, necessary, and related to the accident, then State Farm would not be obligated to pay
8 Plaintiff anything. By way of a second example, if the arbitrator were to conclude that the total value of
9 Plaintiff's injuries/damages were \$115,000, and that \$25,000 of that amount was for medical bills that
10 were reasonable, necessary and related to the accident, then State Farm would be obligated to pay the
11 remaining amount of the MPC coverage, \$20,247.32, but would not be obligated to pay any UIM
12 proceeds. By way of a third example, if the arbitrator were to conclude that the total value of Plaintiff's
13 injuries/damages were \$135,000, and that \$25,000 of that amount was for medical bills that were
14 reasonable, necessary and related to the accident, then State Farm would be obligated to pay the
15 remaining amount of the MPC coverage, \$20,247.32, and would also be obligated to pay \$10,000 in
16 UIM proceeds.

17 13. **The maximum that State Farm would ever be required to pay Plaintiff under this**
18 **Agreement is \$20,247.32 in MPC proceeds and \$25,000 in UIM proceeds.** By way of example, if the
19 arbitrator were to conclude that the total value of Plaintiff's injuries/damages were \$500,000, and that
20 \$40,000 of that amount was for medical bills that were reasonable, necessary and related to the accident,
21 then State Farm would be obligated to pay the remaining amount of the MPC coverage, \$20,247.32, and
22 the full limit of the UIM policy, \$25,000. To be clear, any award that would exceed the total offsets plus
23 the total amount of available MPC and UIM proceeds would automatically be reduced to ensure that
24 State Farm is **not obligated** to pay any amount that exceeds the remaining \$20,247.32 in remaining
25 MPC benefits and \$25,000 in UIM benefits.

26 14. The arbitrator shall not be permitted to make an award of attorney fees to any party.
27 However, the arbitrator may enter an award of costs and interest, if applicable.
28

1 15. Payments of the sum awarded, as limited by the parameters set forth herein, shall be made
2 no later than 20 days after service of the arbitrator's decision.

3 16. The Parties agree to equally share and pay for the arbitrator's fees and costs.

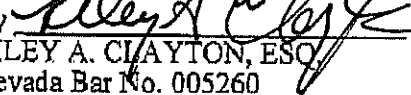
4 17. This Agreement is binding on the Parties, their heirs, executors, administrators, personal
5 representatives, legal representatives, and other such persons or entities.

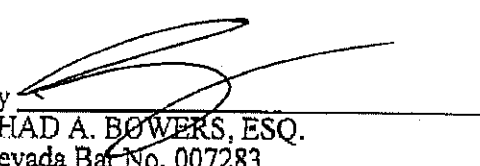
6 DATED this 21st day of June, 2011

DATED this 21st day of June, 2011

7 HALL JAFFE & CLAYTON, LLP

CHAD A. BOWERS, LTD.

8
9 By 
RILEY A. CLAYTON, ESQ.
10 Nevada Bar No. 005260
7455 W. Washington Ave, Suite 460
11 Las Vegas, Nevada 89128
Attorney for Defendant,
12 State Farm Mutual Automobile
Insurance Company

By 
CHAD A. BOWERS, ESQ.
13 Nevada Bar No. 007283
3202 W. Charleston Blvd.
14 Las Vegas, NV 89102
Attorney for Plaintiff, Tracy Moore

15 **ORDER**

16 **IT IS SO ORDERED.**

17 Dated this 28th day of June, 2011.

18
19 
20

21
22 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28